THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.9655 of 2006

Date 11-6-2007

Between:
The Director of Institute of Preventive Medicine,
Public Health Labs & Food (Health) Administration,
Narayanaguda, Hyderabad and others.

.....PETITIONERS

AND

Sri G. Satyanarayana Law Officer and another

.....RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.9655 of 2006

ORDER: (per Smt. T.Meena Kumari,J)

The petitioner-Department filed the present writ petition seeking a writ of Certiorari to call for the records relating to and connected with the orders dated 20.12.2004 in O.A. No. 3038 of 2000 on the file of the A.P. Administrative Tribunal, Hyderabad and to quash the same.

The brief facts of the case are that the 1st respondent herein was initially appointed as Junior Assistant in Government Hospital, Warangal in the year 1968. Thereafter, on his request, he was transferred to the Office of the Institute of Preventive Medicine in September, 1975 and was given last rank in the seniority list of Junior Assistant. However, on 27.5.1981, he was promoted as Senior Assistant and posted to Dental College. Then he made a request to post him back to the Institute of Preventive Medicine as he was well versed with the work of that institute. The Director of the Institute of Preventive Medicine also addressed a letter to the Director of Medical and Health Services requesting for posting the 1st respondent in the Institute of preventive Medicine as he was well conversant with the work of Institute on administrative grounds. The Director of Health also recommended to the Government for transfer of the applicant.

Finally, the 1st respondent was transferred in January, 1981 and was assigned the last rank as on the date of his transfer. Aggrieved, the 1st respondent filed R.P. No. 7057/88 seeking a direction to re-fix the seniority with effect from the date on which he was promoted and also to fix his seniority over the respondents 2 to 9 impleaded therein. Through order dated 3.1.1995, the Tribunal allowed the R.P. holding that vacancies were available in the year 1982 and that the posting of the 1st respondent to Dental college was only due to the reason that all the five units were treated as one Unit at that time. When the authorities did not implement the said order, the 1st respondent filed C.A. No. 15 of 1996 and after filing of the contempt case, the authorities fixed the seniority of the 1st respondent with effect from 11.8.1982. On 14.8.1997, the 1st respondent was promoted as Office Superintendent with effect from 12.1.1990. It is stated that the vacancy of Lay Officer arose on 28.7.1994 consequent on promotion of one Sri Sivaram Prasad. The authorities instead of considering the case of the 1st respondent for promotion to the post of Law Officer, promoted the 2nd respondent on 30.6.1997. According to the 1st respondent, he acquired Law Degree in the year 1974 whereas the 2nd respondent acquired the same in the year 1995. He alleged that had the order of Tribunal in R.P. No. 7057 of 1998 been implemented immediately, he could have been promoted as Law Officer from 28.7.1994. However, he was promoted to the said post on 12.3.1999. When his case was not considered for promotion to the next higher post of Lay Secretary and Treasurer/Gazetted Assistants/Accounts Officer in preference to the 2nd respondent and when the 2nd respondent was promoted as Lay Secretary and Treasurer Grade-I on 3.10.1998, this respondent submitted a representation on 13.3.2000 to the 2nd petitioner herein. However, when no action was taken on the said representation, he filed O.A. No.3038 of 2000 before the Tribunal.

Before the Tribunal, the Department filed counter affidavit stating that the applicant while working at MJM Hospital, Warangal applied for transfer by taking last rank in the Institute of Preventive Medicine, Public Health Labs, Hyderabad. At that time, the Institute of Preventive Medicine was a State level unit and thereafter it became a Directorate and on 25.7.1983, the Government issued G.O. Ms. No.410 MH, dated 25.7.1983 treating it as an independent and separate unit. By that time, the 1st respondent got promotion as Senior Assistant and working as such. The 2nd respondent was appointed as Junior Assistant through A.P.P.S.C. and while working in the erstwhile Food and Drugs Control Department, he was transferred to the Department of Institute of Preventive Medicine on administrative grounds vide proceedings dated 31.10.1981 and he joined on 2.11.1981, by which time, the applicant was not on the rolls of the Institute of Preventive Medicine. By the time, the representation was made by the 1st respondent seeking posting as senior Assistant in the Institute of Preventive Medicine by taking the last rank in the year 1986, the 2nd respondent was already in the Institute of Preventive Medicine and he was promoted as Accountant/Superintendent in July, 1987. The 1st respondent did not raise any objection at that time and later filed R.P. No.7057 of 1988 and as per the directions of the Tribunal in the said R.P., proposals were sent for considering the case of the applicant as Senior Assistant from the year 1981 and accordingly notices were issued to the affected parties and thereafter, his case was considered for giving seniority in the cadre of Senior Assistant from the year 1982. Though the 1st respondent filed the O.A. seeking consideration of his case for the 2nd level gazetted post along with others, but no juniors to the 1st respondent were promoted to that post and nowhere it is stated that the 1st respondent is senior to the 2nd respondent. So far as filling up of the post of Law Officer is concerned, it is stated that at the time when the vacancy of Law Officer arose, the rules governing the said post were the adhoc rules issued in G.O. Ms. No.314, dated 19.5.89 and the same were superceded by G.O. Ms. No. 371, dated 20.7.94; that when they were challenged in O.A. No. 3333 of

95, the Tribunal though initially issued interim orders to follow the old rules., but however, vacated the said orders and directed authorities to follow the new rules. The 1st respondent was silent at that time. Subsequently, the D.P.C. was convened and in that the D.P.C. considered the case of the 2nd respondent for promotion to the post of Law Officer on 30.1.1997. Subsequently, the 1st respondent filed a review petition for review of the D.P.C. in the category of Law Officer and proposals were submitted to the government. Finally, the 1st respondent was promoted to the post of Accounts Officer in June, 2002 and he retired from service on 30.11.2003 on attaining the age of superannuation and therefore he ought not to have any grievance about promotion to the 2nd level gazetted post.

Admittedly, in order to get promotion to the post of Lay Secretary, one has to put in a minimum of three years of service in the category of Law Officer. However, in view of the fact that exemption was granted to the 1st respondent vide G.O. Ms. No.77, dated 17.1.2000, the 1st respondent became eligible to be considered for promotion to the post of Lay

Secretary treating his original date of promotion to the post of Law officer as on the date of occurrence of vacancy. The Tribunal having held that the 1st respondent was unjustly deprived of the opportunity of being promoted to the post of Law Officer as on the date of arising of vacancy inspite of getting exemption from the required service of three years through G.O. Ms. No.77, dated 17.1.2000. It was further observed that had his case been considered in the year 1994, by this time, he would have been senior to the 2nd respondent. Accordingly, it directed the respondents to fix the pay of the applicant in the category of Lay Secretary on par with the 2nd respondent and give him notional benefits.

In the impugned order, the tribunal having held that the 1st respondent had been unjustly deprived of being promoted as law officer inspite of getting exemption from the required service of three years through G.O. ms. No.77, erred in giving a direction to the department to fix pay the pay of the applicant in the category of lay secretary on par with the 2nd respondent. In the circumstances, it would suffice if the order of the Tribunal is modified to the extent that the Department shall consider the case of the 1st respondent in the category of Lay Secretary as per rules that were available on 27.8.1994 and pay the monetary benefits from the date of filing of the O.A.

Accordingly, this writ petition is disposed of directing the Department to consider the case of the 1st respondent for the post of Lay Secretary as per rules that were available on 27.8.1994 and pay the monetary benefits from the date of filing of the O.A.

The writ petition is accordingly disposed of. No costs.

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T. MEENA KUMARI,J

DATE: 11th June, 2007

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G. CHANDRAIAH,J

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